

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 2, 73, 74 and 90 of the)	
Commission's Rules to Permit)	ET Docket No. 03-158
New York Metropolitan Area)	MB Docket No. 03-159
Public Safety Agencies to Use)	
Frequencies at 482-488)	

**Comments of the Police Department of the City of New York
and the New York Metropolitan Advisory Committee**

The Police Department of the City of New York (Department) and the New York Metropolitan Advisory Committee (NYMAC) submit these comments in response to and in support of the Commission's Notice of Proposed Rulemaking (NPRM) to reallocate TV broadcast channel 16 (482-488 MHz) in the New York metropolitan area to the land mobile service for public safety communications on a permanent basis.¹ The Commission's proposal will make a tangible and critical contribution to public safety by strengthening its communications resources.

The New York City Police Department is the Nation's largest police agency with plenary law enforcement responsibility over the City's five boroughs. The NYMAC agencies encompass other New York City agencies with public safety responsibilities as well as agencies providing core public safety responsibilities in adjacent jurisdictions. In addition to the Department, NYMAC consists of the New York City Department of Information and Technology, the New York Fire Department, the Department of

¹ In the Matter of Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488, *Notice of Proposed Rulemaking*, ET Docket No. 03-158, MB Docket No. 03-159, FCC 03-165 (released July 10, 2003).

Corrections, the Department of Transportation, the Department of Parks & Recreation, the Health & Hospital Police, and the Department of Sanitation. NYMAC also includes the New York City Transit Authority, the Bergen County, New Jersey Police Department, the Elmont Fire District in Nassau County, and the City of Yonkers Fire Department in Westchester County. The Nassau County Police Department and the Suffolk County Police Department are also members of NYMAC.

As the NPRM recognizes, the Department and NYMAC agencies have made an enormous investment in the infrastructure and equipment surrounding channel 16 operations. Channel 16 is a critical part of the communications capability of these agencies. Importantly, substantial investment remains to be made by these agencies. The Commission's permanent authorization will allow these investment plans to move forward to meet the challenges public safety communications face.

The Department and NYMAC endorse the Commission's proposal to reallocate channel 16 in the New York Metropolitan area to public safety communications under Section 303 of the Communications Act. The Department and NYMAC recommend that the Commission amend its technical parameters describing those authorized to use channel 16 and the protections accruing to include operations in Yonkers, Westchester County, New York.

The Commission's Determination that Channel 16 is Critical to Public Safety Communications is Supported by the Record as is the Determination that Channel 16 Public Safety Operations Coexist with other Services

The investment and time committed to design, construction and implementation of channel 16's infrastructure and the equipment was directed to improving the quality and services of public safety in the New York Metropolitan area. In the case of the

Police Department, it has resulted in an increase in the efficiency and effectiveness of the Department's wireless communications capability and has improved how it responds to citizens confronting emergencies. Significantly, it has presented opportunity for a diverse and redundant system to be constructed and implemented that approaches the standard public safety communications must reflect. The infrastructure is the foundation of continuing investment to bring more real time information to officers responding to emergencies and is a critical element in bringing the right resources to an emergency more expeditiously.

A significant element of the investment has been the cost and expense devoted to ensuring that channel 16 public safety operations remain within the parameters of the Commission's temporary authorization and that no interference emanate to harm other authorized services adjacent to this spectrum band. As reflected by its Technical Analysis, the Department and the other NYMAC agencies embrace seriously the obligation to conduct operations consistent with the Commission's rules and policies. The Commission's determination that the use of public safety services has a history of coexistence with the users of co-channel and adjacent channel spectrum is well founded and will continue with a permanent authorization.

The Department's request for permanent allocation is premised on experience of responding to competing uses for this spectrum. A number of applications by other services that would encroach on public safety communications have been made, some of which challenge the authority of channel 16 public safety operations and the permanency of these operations. The Department's concern relates not to the intent of the Commission's rules but to their pragmatic limitations.

Specifically, the Commission's rules do state that low power and TV translator stations are secondary to existing land mobile uses and must correct whatever interference these operations cause to land mobile stations or cease operations. Yet, once a station is constructed, once it is operational, realistically, remedies are confined. While addressed more directly in another proceeding², what is critical for the Department and NYMAC agencies is the clear import permanent allocation of channel 16 would bring and the accruing responsibilities other services seeking to use channel 16 in another geographic area or adjoining spectrum have.

The Department presented Section 337(c) of the Communications Act of 1934, as amended, as the path for the Commission to allocate channel 16 permanently to public safety communications. Section 337(c) establishes the conditions by which public safety agencies may obtain spectrum. The Commission proposes to allocate channel 16 permanently under its core authority to administer and manage the spectrum contained in Section 303. We endorse this proposal. While we do not believe that section 337(c) limits that Commission's ability to make a permanent allocation, there exists no controversy that the Commission needs resolve.

The Commission notes that the original waiver and temporary authorization was premised on several engineering considerations that protected public safety operations and broadcast operations. The Commission proposes to amend sections 73.6020, 74.709, 90.303, 90.305, and 90.307 by delineating channel 16 as encompassing public safety communications in New York City, Nassau and Suffolk Counties. The City of Yonkers,

² In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Notice of Proposed Rulemaking*, MB Docket No. 03-185 FCC 03-198 (released August 29, 2003)

in Westchester County, has participated in NYMAC since its inception when the original waiver request was submitted.³ Its Fire Department communications system is dependent on spectrum allocated from channel 16. Its operations on channel 16 have not and will not impact other services upon the Commission's permanent allocation. We recommend that the Commission recognize this history and use in its allocations table and regulations.

CONCLUSION

Channel 16 represents a critical communications network not only for the Department but for public safety agencies in the City and the surrounding counties. There is a need to ensure its continued viability and to protect channel 16 as a fundamental to public safety communications in the region. The investment made and dependence on channel 16 as a vital element of homeland security cannot be understated.

³ Yonkers extends four and one-quarter miles along the Hudson River, adjacent to and north of the Borough of the Bronx, stretching four miles eastward to the Bronx River and covering 18.3 square miles.

Homeland security is a foremost national priority, which agencies at the federal, state and local level must pursue together. The Commission's NPRM represents in a real way how it takes seriously the challenge to improve homeland security and that its commitment extends to local public safety efforts.

Respectfully submitted,

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